

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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**Chair
Commissioner
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**In the Matter of the Joint Petition of
Citizens Communications Company and
Global Crossing LTD. for Approval of Sale
of Stock**

ISSUE DATE: May 25, 2001

DOCKET NO. P-407, 405,3131/PA-00-1109

ORDER APPROVING SALE

PROCEDURAL HISTORY

On August 17, 2000, Global Crossing LTD. (Global Crossing) and Citizens Communications Company (Citizens) (collectively Joint Applicants) jointly filed a petition to transfer control of two properties owned by Global Crossings to Citizens: Frontier Communications of Minnesota, Inc. (Frontier or Frontier Minnesota) and Frontier Communications of America, Inc. (FCA). Frontier is an incumbent local exchange carrier (ILEC) operating 45 exchanges in Minnesota. FCA is a long distance carrier operating within Frontier's service area that also plans to do business as a competitive local exchange carrier (CLEC) outside of Frontier's territory. The petition is the result of a July 11, 2000 Stock Purchase Agreement (Agreement) between the Joint Applicants.

On October 10, 2000, the Department of Commerce (DOC) submitted comments opposing the Joint Applicant's request for approval to sell stock. Alternatively, the DOC recommended that the Commission defer a decision on the sale until the Commission considers the Alternative Form of Regulation (AFOR) plan submitted by Frontier.¹

On October 10, 2000, the Office of Attorney General (OAG-RUD) filed its comments requesting that it be allowed to file further comments after Frontier's AFOR case has been settled.

On October 10, 2000, the Communications Workers of America (CWA) filed a petition to intervene and its comments. The CWA recommended that the sale of stock to Citizens be conditioned on the requirement that all assets and liabilities of the Frontier pension plan be transferred to Citizens.

¹ See In the Matter of a Petition by Frontier Communications of Minnesota, Inc. Requesting Adoption and Renewal of an Alternative Regulation Plan, Docket No. P-405/AR-00-394.

On October 20, 2000, the Joint Applicants filed a Memorandum in Opposition to CWA's petition to Intervene.

On March 13, 2001, the Joint Applicants filed their First Amendment to the Stock Purchase Agreement. The Amendment has the effect of transferring obligations relating to employee benefits and post retirement benefits to Citizens rather than have them remain with the Seller (Global Crossing).

On April 12, 2001, the OAG and the DOC each filed comments recommending approval of the sale of stock to Citizens contingent upon the Commission's approval of Frontier's AFOR plan in Docket No. P-405/AM-00-394. The OAG-RUD, DOC and Frontier jointly filed a revised AFOR plan for Frontier on March 9, 2001. The revised AFOR was the result of a negotiated settlement between the parties.

On April 20, 2001, CWA filed a letter stating that it now supports the sale of Frontier to Citizens.

On May 10, 2001, CWA sent a letter requesting withdrawal of its request to intervene.

On May 15, 2001, this matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Introduction

On May 15, 2001, both the petition to transfer control of Frontier and FCA to Citizens (this docket) and the revised AFOR plan² came before the Commission. This Order specifically addresses the Commission's action regarding the sale to Citizens of the Frontier properties. This Order does not address the Commission's decision regarding the revised AFOR plan except to discuss some of the terms of the revised AFOR that are pertinent to the Commission's consideration of this acquisition.

II. Description of the Transaction

On July 11, 2000, Citizens, Global Crossing and Global Crossing's subsidiary, Global Crossing North America, Inc., entered into a stock purchase agreement whereby Citizens, by purchasing all of the stock of a holding company named Frontier Subsidiary Telco Inc., will acquire the ownership and control of the entirety of Global Crossing's local exchange business. These local exchange companies operate in various states, including Minnesota, under the Frontier name.

² Ibid.

The proposed transaction, by transferring control of Frontier Communications of Minnesota, Inc. to Citizens, will make Citizens the owner of the entirety of Frontier's incumbent local exchange operations in Minnesota. Citizens will also acquire FCA, which provides competitive long distance services within the Frontier local exchange territories and will provide competitive local exchange and long distance services outside the Frontier territories.

III. The Companies

A. Frontier

Rochester Telephone, subsequently renamed Frontier, entered Minnesota's local exchange market in 1991 when the Commission approved the company's acquisition of Centel Corporation's Minnesota telephone operations.³ In 1999, Global Crossing purchased Frontier Corporation, a holding company, and all of its subsidiaries including Frontier Communications of Minnesota, Inc.⁴ Frontier currently serves approximately 129,000 access lines in 45 local exchanges in Minnesota.

B. Global Crossing

Global Crossing is in the submarine cable industry⁵ and, through its purchase of Frontier Corporation and all of its subsidiaries in 1999, it is also an incumbent local exchange carrier in Minnesota. It is now selling all of its local exchange properties in order to focus on the global data and long distance markets. It is also selling its FCA property, which provides long distance service within Frontier's service area and plans to provide competitive local exchange carrier (CLEC) service outside the Frontier territory.

C. Citizens

Citizens is a diversified public utility , which, through its various operating divisions or subsidiaries, provides telecommunications, electric, gas, water and wastewater services in 22 states. Citizens currently operates as an incumbent local exchange carrier (ILEC) in 14 states.

³ ORDER APPROVING TRANSFER OF OPERATIONS AND AUTHORITY, Docket No. H-2028,P-405/PA-91-130, June 26, 1991.

⁴ Order in Docket No. P-437, 3161, 5025, 405,3136, 5442, 3131, 449/PA-99-590, In the Matter of the Joint Petition of Global Crossing, Ltd. And Frontier Corporation for Approval of the Acquisition of all the Outstanding Shares of Stock of Frontier Corporation by Global Crossing, Ltd., August 11, 1999.

⁵ Global is building and operating a global fiber optic network for data, voice, video, and Internet transmissions.

In recent years Citizens has determined that it should focus its business on operating telecommunications businesses in small and medium sized cities and towns. In order to do so, Citizens has begun the process of divesting its non-telecommunications utilities and acquiring telecommunications properties. In Minnesota, Citizens has acquired the property formerly owned by Contel of Minnesota, Inc. d/b/a GTE Minnesota.⁶

Besides the stock purchase agreement for 45 exchanges in Minnesota that is the subject of this Order, Citizens has entered into a definitive agreement to acquire 43 exchanges from Qwest Corporation,⁷ which will come before the Commission at another time. After the completion of these purchases Citizens will own approximately 450,000 access lines in Minnesota.

Citizens also continues to acquire other local exchange properties throughout the United States. In addition, Citizens has entered into definitive agreements to sell all of its water and waste water utilities, its electric utility properties, and some of its gas properties.

IV. The Legal Standard

There are two statutes that govern this transaction, Minn. Stat. § 237.23 and Minn. Stat. § 237.74, subd. 12.

Minn. Stat. § 237.23 grants the Commission authority to approve or disapprove the acquisition of telephone property by any telephone company, corporation, person, partnership or associations subject to the provisions of this chapter.

Minn. Stat. § 237.74, subd. 12 requires telecommunications carriers to obtain Commission approval to “acquire ownership or control” of telecommunications “line, plant or system”. The statute states in relevant part:

No telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the Commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition...

The Commission must determine whether the public interest, convenience and necessity will be served by Citizens acquiring ownership or control of Frontier and FCA’s line, plant or system. The legislature set forth eight goals for the commission to consider in executing its regulatory duties in regard to telecommunications services:

⁶ See ORDER APPROVING SALE; GRANTING ETC STATUS; AND ISSUING CERTIFICATE OF AUTHORITY AND REQUIRING FILINGS. Docket No. P-5316, 407/PA-99-1239, July 24, 2000.

⁷ Docket No. 421/AM-99-552.

1. supporting universal service;
2. maintaining just and reasonable rates;
3. encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
4. encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
5. maintaining or improving quality of service;
6. promoting customer choice;
7. ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
8. encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

Minn. Stat. § 237.011.

V. Position of the Parties on the Stock Purchase

A. Joint Applicants

The Joint Applicants argued that the proposed transaction is in the public interest for several reasons:

- **Citizen's will maintain Frontier's high level of service quality;**
- **the proposed transaction will enhance the availability of advanced services;**
- **the proposed transaction will enhance the availability of other new services;**
- **the proposed transaction will enhance growth, economic activity and local economics;**
- **the proposed transaction will continue good customer relations; and**
- **the proposed transaction will continue regulatory compliance.**

The Joint Applicants stated that the proposed acquisition by Citizens will cause no adverse impact on Frontier's local exchange operations or customers. Citizens, the parent organization, is focused on the local exchange business and shares Frontier's history of commitment to customer service.

Further, they argued that the more concentrated service territory should simplify the delivery and cost of new services in the future. The increased size and depth of expertise of the combined companies will provide the resources needed to reduce the time to market new service offerings.

In addition, they argued that the combined size and depth of expertise of the companies will help create a "critical mass" of employees, customers and technology. The companies' increased size will give them an ability to focus on growing their customer base through new business opportunities. The companies' additional size, expertise and focus on growth will enhance economic activity and the local economies in the areas in which they serve.

B. Department of Commerce

1. Initial Comments

The DOC initially recommended that the petition of the Joint Applicants to transfer control of Global Crossings' Frontier Communications of Minnesota to Citizens Communications Company be denied. The DOC stated several concerns including: 1) no promise to improve service quality, 2) no rate reductions (although costs of delivering services will be reduced), and 3) no commitment to deploy advanced services. The DOC argued that without a commitment from the Joint Applicants to clear public benefits such as reduced rates, improved service quality or accelerated deployment of advanced services the petition should be denied.

The DOC indicated that it was addressing all of these issues with Frontier as part of the provisions of a renewed AFOR plan. For this reason, and as an alternative to denying the Joint Applicants' petition, the DOC recommended that a decision on this matter be deferred until Frontier's AFOR plan comes before the Commission.

Further, the DOC stated that neither the initial acquisition nor the ongoing operations of the Frontier properties should threaten Citizens' ability to continue providing reliable service to its customers. It stated that Citizens has the equity and financing to make this acquisition successful and the Frontier properties have the profitability to do so.

2. Comments on the Revised Frontier AFOR Plan

The DOC argued that the Revised AFOR Plan⁸ satisfactorily addresses the public interest concerns of the DOC and for this reason the DOC recommends approval of the proposed acquisition.

The DOC indicated that under the Revised AFOR Plan service quality provisions have been established for the three years of the plan. The standards in the plan will be reinforced by penalty payments as well as individual customer remedies in the form of bill credits and the provision of cellular service.

Further, Frontier has committed to reduce rates by \$1.2 million for each of the three years the plan is in effect.

Frontier will further improve its infrastructure by extending fiber optic cable to exchanges serving over 90 percent of its customers. Frontier will provision digital subscriber loop service (DSL) and asymmetrical DSL in all exchanges, subject to certain demand conditions, by year-end 2003.

⁸ Filed with the Commission on March 9, 2001 by Frontier, the DOC and the OAG-RUD.

Frontier will provide an unbundled network element platform (UNE-P) to competitors, waive its rural exemption under the Telecommunications Act of 1996, and develop a standard offering for wholesale services including line sharing, line splitting and collocation. These will all advance local competition.

C. OAG-RUD

The OAG-RUD stated that the Revised AFOR protects consumers by ensuring the provision of quality service at affordable rates, promotes local competition by facilitating competitive access to Frontier's local service network, and provides for the expedited deployment of advanced telecommunications services in the Frontier exchanges. Further, the OAG-RUD argued that these provisions meet the public interest standard required for approval of the sale and the sale should be approved.

VI. CWA's Petition to Intervene

CWA filed a petition to intervene to address issues concerning the pension benefits for employees that will be transferred to Citizens as a result of the sale of exchanges from Global Crossing to Citizens. CWA's concern was that the sale, as originally set forth, would have a negative impact on Frontier's non-management employees' pension benefits.

The concern arose from the provision in the stock purchase agreement which provided that the trust fund that supports the defined benefit plan in which Frontier's non-management employees participate would not transfer to Citizen's control but would stay under the control of Global Crossing. Since these employees will, after the stock sale, be employees of Citizens they will no longer be employed by the entity controlling their pension plan.

The concerns stated by CWA were alleviated by the First Amendment to the Stock Purchase Agreement, filed March 13, 2001, which provided that substantially all of the assets of the Frontier Pension Plan Trust Fund will be transferred to Citizens. Following this, CWA indicated it supported the sale and requested to withdraw its petition to intervene.

VII. Commission Action

The revised Frontier AFOR plan⁹ that was approved by the Commission included provisions designed to improve service quality, maintain just and reasonable rates, promote competition, and speed the deployment of advanced services.¹⁰ These are all central goals of

⁹ The revised AFOR plan that was brought to the Commission in Docket No. P-405/AR-00-394, reflected a settlement reached by the parties. At the May 15, 2001 hearing the Commission adopted the revised AFOR plan with one modification (regarding the structure of the rate reduction), in which the parties concurred.

¹⁰ See ORDER MODIFYING ALTERNATIVE REGULATION PLAN, In the Matter of a Petition by Frontier Communications of Minnesota, Inc. Requesting Adoption and

Minnesota's telecommunications policy.¹¹ It is these provisions, as set forth in the revised AFOR plan, that the Commission relies on to determine that this acquisition meets the public interest standard of Minn. Stat. § § 237.23 and 237.74.

In the revised AFOR, service quality provisions have been established for the three years of the plan. Penalty payments and individual customer remedies are set forth. To improve infrastructure, Frontier has committed to extend fiber optic cable to exchanges serving over 90 percent of its customers and will provision DSL and asymmetrical DSL in all exchanges, subject to certain demand conditions, by 2003. To promote competition the AFOR provides that Frontier will provide an unbundled network element platform (UNE-P) to competitors, waive its rural exemption and develop a standard offering for wholesale services. The AFOR further provides that Frontier will reduce rates by \$1.2 million for each of the three years the plan is in effect.

With the incorporation of these provisions in the Revised AFOR, the Commission agrees with the parties that there is a significant likelihood of public benefit in the form of lower rates, increased competition, greater availability of advanced services, and the continuation of high service quality. There is nothing that shows a reasonable likelihood of public harm. For these reasons the Commission will approve the transfer of Frontier and FCA to Citizens.

ORDER

1. The Commission approves the joint petition of Global Crossing Ltd. and Citizens Communications Company (Joint Applicants) to transfer control of Global Crossing Ltd.'s Frontier Communications of Minnesota, Inc. and Frontier Communications of America, Inc. properties in Minnesota to Citizens Communications Company subject to the following conditions:
 - a) Frontier-Minnesota shall be subject to all terms and conditions of the Revised Plan for Alternative Form of Regulation for Frontier Communications of Minnesota, Docket No. P-405/AR-00-394, which was jointly submitted by Frontier-Minnesota, the DOC, and the OAG-RUD on March 9, 2001 and adopted by the Commission in its meeting on May 15, 2001, including rate reductions in the amount of \$1.2 million per year for three years (plus the applicable \$39,100 per month adjustments in the first year reduction provided in Attachment A¹²) at the times provided in Attachment A;

Renewal of an Alternative Regulation Plan, docket No. P-405/AR-00-394, May 25, 2001.

¹¹ Minn. Stat. § 237.011.

¹² Attachment A to the Revised Plan for Alternative Form of Regulation For Frontier Communications of Minnesota filed with the Commission on March 9, 2001, in Docket No. P-405/AR-00-394.

- b) that the specific rate elements to be reduced shall be the rate elements finally determined by the Commission in Docket No. P-405/AR-00-394.
- 2. The Joint Applicants shall file within 60 days after the sale is completed:
 - 1) a joint affidavit of acquisition completion and accounting entries reflecting the sale,
 - 2) a proposed customer notice for Commission staff review, and
 - 3) any revised tariffs that may be needed.
- 3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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